

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 508 of 1999.

Date of Decision: May 3, 2007

1. CWP No. 508 of 1999.

Ishwar Dutt & ors. ... Petitioners.

versus.

State of H.P & ors. ... Respondents.

2. CWP No. 187 of 2000.

Ram Dittu & Ors. ... Petitioners.

versus.

State of H.P. & ors. ... Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): Ms. Ranjana Parmar , Advocate.

For the Respondents): Mr. M.S.Chandel, Advocate General with
Mr. R.M.Bisht, Dy.Advocate.General.
1 & 2.

Ms. Monika Joshi, Advocate vice
Mr. Shrawan Dogra, Advocate, for
Respondents 3 to 5, 7 and 8.

Per- Deepak Gupta, J

By this judgment, two writ petitions are being disposed of as common questions of law and facts arise in the same. In fact, these two petitions are squarely covered by an earlier judgment of this Court delivered in CWP No. 567 of 1999, decided on 9.4.2007.

This case has a long and chequered history. The petitioners at the relevant time were all T-mates in the Electrical Division of the H.P. Public Works Department. It is the admitted case of the parties that the petitioners were junior to the private respondents in the joint seniority list of T-mates as on 30.6.1985. It is also not disputed that whereas the petitioners are matriculates, the private respondents are not matriculates.

Vide office order dated 25.9.1986, a number of persons including the petitioners were promoted as Electrician Grade-II. Feeling aggrieved against the promotions of the petitioners, the private respondents filed CWP No.873 of 1986 before this Court. Their main ground of challenge was that there were no existing Recruitment and Promotions Rules (for short: R & P Rules) and as per past practice, promotions to the post of Electrician Gr.II from the cadre of T-mates were to be made solely on the basis of seniority. In the petition it was mentioned that the present petitioners had been promoted on the basis of the proposed R & P Rules. According to the private respondents herein, these proposed R & P rules could not be given the status of the actual rules and therefore, promotions should have been made only on the basis of seniority as per past practice.

The stand of the present petitioners and the State is that prior to the filing of this writ petition, another writ petition being CWP No. 464 of 1985 (*Kunj Bihari v. State of HP and another*) had been filed and in the said petition, this court had passed the following orders :-

"Present: Sh Bhawani Singh, Advocate for the petitioner.
Sh P. N. Nag, Advocate General for the respondents.
On perusal of the material on record, no case for interference is made out.

The learned Advocate General has placed on record a copy of the letter dated December 10, 1985 addressed to him by the Registrar Himachal Pradesh PWD, Shimla stating that vacancies in the posts of Electrician Grade.I, have arisen after May 29, 1979 but no appointment by promotion or by direct recruitment

as the Recruitment and Promotion Rules are under process and have yet not been notified by the State Government.

The learned Advocate General has also stated, on instructions received from the Executive Engineer, Electrical Division, HPPWD, Shimla that in the Recruitment and Promotion Rules, which are under process, a provision has been made that the posts of Electrician Grade –I will be filled up by direct recruitment promotion in the ratio of 25/75 per cent.

In view of the position emerging as aforesaid, it appears to be just and proper to direct the State Government to take an appropriate decision in regard to the Recruitment and Promotion Rules and to notify them, if approved, on or before March 23 1, 1986. Meanwhile, there appears to be no objection in quota in the posts of Electrician, Grade-II by treating the Draft Recruitment and Promotion Rules as the guidelines for the filling up of the vacant posts.”

(Emphasis supplied).

A reading of the above order makes it apparent that some persons had approached this Court that promotions be made to the posts of Electrician Gr.II and this Court had directed the State Government to take appropriate decision in regard to the notification of the draft R & P rules and had also directed that in the meantime, promotion to the posts of Electrician Gr.II be made by treating the draft R & P rules as guidelines for filling up the vacant posts. The stand of the State is that the posts were filled up in compliance with the orders of this Court. Admittedly, time for notifying the R & P Rules was extended from time to time and final extension was granted up to May 30, 1987. The admitted facts are that the draft rules were not finalized in the time granted and were finalized only in the year 1985. The writ petition filed before this Court was transferred to the learned H.P.State Administrative Tribunal and the learned Tribunal on September 3, 1999, has partly allowed the same. The operative portion of the order dated September 3, 1999 reads thus:

“Taking into consideration the aforesaid facts, the ad-hoc promotion of respondents No. 3 to 21 without there being any Recruitment & Promotion Rules and without finalizing the draft Recruitment and Promotion Rules within the stipulated time as provided by the order of the Hon’ble High Court are set aside, the respondents No.1 and 2 are directed to make promotions in accordance with Recruitment & Promotion Rules finalized in accordance with law. Thus, the present application is partly accepted in the aforesaid terms. The parties are left to bear their own costs.”

Aggrieved against the said order of the learned Tribunal, the original writ petitioners have filed the present writ petition in this Court.

It would be pertinent to mention that the private respondents herein had also filed a CWP No. 567 of 1999 in this Court and it was contended that the decision of the learned Tribunal inasmuch as it did not grant promotion to the petitioners, is illegal and liable to be set aside. Unfortunately, at that time nobody pointed out to us that the present two petitions had also been filed by the private respondents in the OA challenging the order of the learned Tribunal in so far as the said order was against them.

After hearing learned counsel for the private respondents herein who were petitioners in CWP No.567 of 1999, the said writ petition was dismissed by this Court on 9.4.2007 and held as follows:

“No doubt, it is true that the proposed R & P rules were not notified within the time prescribed by this Court. However, since the promotions were made pursuant to the directions of this Court that such promotions be made on the basis of the proposed R & P rules, the said rules must be held to have been given the status of executive instructions or guidelines and have the force of law. In our opinion, the learned Tribunal erred in setting aside the promotions of the private respondents. However, since that portion of the order has not been challenged before us, we cannot set aside the same. In the absence of any other rules, executive directions or instructions, the proposed R & P rules which

had been given the judicial nod by this Court in **CWP No. 464 of 1985** had to be followed. While taking this view, we are strengthened by the judgment of the apex Court in **Delhi Judicial Services Association and another v. Delhi High Court and others** (2001) 5 SCC 145, wherein the Court held that even though the temporary posts had been created prior to the amendment of the rules but since they had been filled up in terms of the amended rules as per the directions given by the apex Court dated 18.12.1986 whereby Supreme Court directed the Delhi High Court to start the process of selection by direct recruitment in accordance with draft rules the appointments/promotions made were legal and valid. The apex Court rejected the contention of the petitioners that the appointments/promotions should have been made in accordance with un-amended rules. In the present case, the stand of the State is even on the better footing as there were no rules existing prior to 1995 and the past practice will have to give way to the draft rules which received the assent of this Court.”

A perusal of the above order shows that we have in fact clearly given our opinion that the learned Tribunal had committed an error in setting aside the promotions of the private respondents. We had further held that since that portion of the order has not been challenged before us, we cannot set aside the same. Now, the order has been challenged before us and in view of the earlier decision, we have no hesitation in allowing the aforesaid two writ petitions and setting aside the order of the learned Tribunal in so far as it set aside the ad hoc promotions of respondents 3 to 21 on the ground that there were no R & P Rules framed within the time specified by the High Court.

As we have already held earlier, the present petitioners were promoted pursuant to the orders of the High Court, and, therefore, these promotions could not be said to be illegal on any ground whatsoever. We, therefore, allow the writ petitions and hold that the order of the learned

Tribunal quashing the promotions of the petitioners herein is set aside.
The petitioners shall be entitled to all consequential benefits.

A copy of this judgment be also placed on CWP No. 567 of 1999 and in any case hereafter any party applies for a copy of this judgment in CWP No. 567 of 1999, a copy of this judgment shall also be given to the said party.

(Deepak Gupta), J.

May 3, 2007.

(Surinder Singh), J,

s.